

PATENT
Atty Docket No. KLAC0015

**TRANSMITTED
VIA FACSIMILE
SEPTEMBER 27, 2002**

**TO: STEVE KASEY
U.S. PATENT & TRADEMARK OFFICE
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PAGES: 36**

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OFFICE OF THE SPECIAL
PROCEDURES EXAMINER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

HENRIK NIELSEN, ET AL.

Title: DETECTION SYSTEM FOR
NANOMETER SCALE TOPOGRAPHIC
MEASUREMENTS OF REFLECTIVE
SURFACES

Serial No.: 09/195,533

Filed: NOVEMBER 18, 1998

Group Art Unit: 2877

Examiner: R. Rosenberger

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**PETITION TO REVIVE APPLICATION FOR REASONS OF ERRONEOUS
ISSUANCE OF NOTICE OF ABANDONMENT**

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

It has recently come to the attention of Applicants that the above-entitled application is considered abandoned by the Patent and Trademark Office. Applicants submit that the pronouncement of abandonment was incorrect based on the

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OFFICE OF PETITIONS

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circumstances, and note that time passage since purported abandonment of this case is a result of Applicants' attorneys not receiving a Notice of Abandonment. Applicants thus petition for revival of the present case and a full and complete review of the application.

REMARKS

On February 28, 2001, the Patent and Trademark Office issued an Office Action rejecting all claims in the above-entitled case. On May 29, 2001, Applicants timely submitted a responsive Amendment responding to all points raised by the Examiner and fully complying with 37 C.F.R. 1.111. A copy of the Amendment filed is attached hereto as Exhibit A ("the Amendment").

Applicants filed the Amendment of Exhibit A together with a Request for Continued Examination, attached hereto as Exhibit B ("the RCE" or "the RCE application"). Applicants' attorneys had believed the February 28 Office Action to be a Final Office Action, when in fact it was a Non-Final Office Action.

The Patent Office notified Applicants of the erroneous RCE by mail on June 25, 2001. The Patent Office provided a Notice of Improper Request for Continued Examination, Form PTO-2051, attached hereto as Exhibit C ("the Notice"). The PTO had checked box number 3, which states in part:

If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111.

The RCE was accompanied by a reply to a non-final office action. Applicants relied upon this checked statement to await further consideration of the Amendment filed. Applicants refrained from resubmitting the Amendment or otherwise acting to facilitate consideration of the Amendment based on this statement in the Notice. In short,

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Applicants understood the impropriety of the RCE application but relied on the statement from the PTO to refrain from further acting.¹

Applicants recently noted the lack of activity in this matter and contacted the Patent Office. The Patent Office indicated that the present case was considered abandoned and a Notice of Abandonment had been issued and mailed in November, 2001. Enclosed as Exhibit D is a Declaration from Steven W. Smyrski, attorney for Applicants, stating that he did not receive a Notice of Abandonment in the present case. Mr. Smyrski notes his change of employment, declares that no Notice of Abandonment was provided to him by his former firm, states that appropriate persons at his former firm are unaware of a Notice of Abandonment, and states the opinion that no Notice of Abandonment was received by him or his prior employer for this case.

In summary, the Applicants in this case submitted a timely and proper Amendment in response to the Office Action. The error in submission of the Amendment together with the RCE was identified by the PTO together with a statement that the Amendment would be considered in due course. Applicants relied on this statement to take no further action with respect to the Amendment submitted. The PTO failed to consider the Amendment and instead issued a Notice of Abandonment, which Applicants' attorneys never received.

¹ Applicants note that the Notice was received on July 2, 2001. This was still within the six month period for replying to the February Office Action. Had Applicants been informed that there was a problem and the Amendment would not be considered, Applicants would have had time to refile the Amendment to avoid abandonment. The statement in the Notice caused Applicants to await further action from the PTO, which ultimately worked to the detriment of the Applicants.

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CONCLUSION

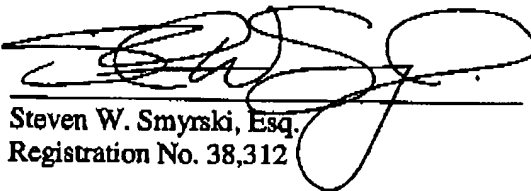
Based on the foregoing, Applicants respectfully request revival of the application, withdrawal of the Notice of Abandonment issued in this case, and full consideration of the Amendment at an early date.

Applicants contend that the circumstances prompting this Petition were not the result of improper action or inaction by Applicants or their attorneys. Applicants respectfully submit that the Notice of Abandonment and the failure to timely consider the Amendment were acts of the Patent Office. Applicants therefore respectfully request that no fee be charged in connection with this Petition.

Should the Office be of the opinion that a fee is due for this Petition, Applicants hereby authorize the Commissioner to charge any fees or deficiencies to Deposit Account 502026.

Respectfully submitted,

Date: September 27, 2002


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